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The steady increase in the number of decisions rendered by the Supreme Court and High Court makes it very necessary to have a resume of the case-law at least once a year so that one can take note of the current trends of the law. The attempt to give the history of the case-law for a year has in its very nature certain limitations. While it has to be merely a factual summary of the decisions, there is not much scope for making comments on the decisions themselves. Even with these limitations, a mere survey of the case-law of the past year under familiar topical headings has been recognised to have its own advantages and the requests for such a survey more than justifies the usual feature, though a little belated this year.

High Court—Its Powers and Jurisdiction.

As regards the powers of the High Court to issue writs specified in Article 226 of the Constitution it was held by the Full Bench in *Srinivasa Bhat* v. *The State of Madras*[1], that the High Court has both the power and jurisdiction to issue the writs specified in Article 226 of the Constitution not only within the limits of its original jurisdiction but throughout the territories of the State. An argument to the contrary based upon the decision of the Privy Council in *Ryots of Garbando* v. *Zamindar of Parlakimidi*[2], was negatived by the Full Bench. The Supreme Court had occasion to point out in *The State of Orissa* v. *Madan Gopal Rungta*[3], the exact scope of the High Court's powers under Article 226 of the Constitution. It was held that directions in the nature of *interim* relief as the *only* and final relief cannot be granted under Article 226 when a Court expressly states that it refrains from determining the rights of parties on which a writ of *mandamus* or directions of a like nature could be issued because the existence of a right in the aggrieved party is the foundation of the exercise of jurisdiction of the Court under that Article. When a Court declines to decide the rights of parties it could not merely for the purpose of facilitating the institution of a civil suit by the aggrieved party issue directions in the nature of temporary injunction only to circumvent the provisions of section 80 of the Civil Procedure Code. As remarked by the Supreme Court, the language of Article 226 does not permit such an action. such a direction would not be within the scope of that Article. That the High Court cannot embark on an enquiry into the merits in *certiorari* proceedings was a point decided in *Panchayat Board, Kankipadu* v. *Inspector of Local Boards*[4]. According to the ruling in *Dr. M. Krishnamurthy* v. *The State of Madras*[5], neither the Government nor the Disciplinary Proceedings

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1. (1951) 1 M.L.J. 115 (F.B.).
2. (1943) 2 M.L.J. 254 : L.R. 70 I.A. 129 : I.L.R. (1944) Mad. 457 (P.C.).
3. 1951 S.C.J. 764 : (1951) 2 M.L.J. 645 (S.C.).
4. (1951) 1 M.L.J. 285.
5. (1951) 1 M.L.J. 709.

Tribunal enquiring into the conduct of a civil servant would fall within Article 227 of the Constitution and come under the superintendence of the High Court, so as to empower the latter to interfere with its orders. The conditions necessary for enabling the High Court to withdraw a case filed in a Subordinate Court to itself under the provisions of Article 228 of the Constitution were stated in *Ramaswami Ambalam* v. *Madras Hindu Religious Endowments Board*[1], and it was held that where a question regarding the validity of section 57 of the Madras Hindu Religious Endowments Act arises, it was fit case for withdrawal provided the other conditions were satisfied.

CONSTITUTIONAL LAW.

The much debated question as to the constitutional validity of delegated legislation came in for a very exhaustive discussion by the Supreme Court in the *Reference under Article* 143 *of the Constitution*.[2] The doubts on the subject created by the decision in *Jatindra Nath Gupta* v. *Province of Bihar*[3], to some extent made the reference necessary. Though the decision is with reference to the provisions of particular laws, namely, the Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947, and Part C States (Laws) Act, 1950, they were chosen as the object of reference as being typical of a certain kind of legislation which is attacked as amounting to delegation of legislative power which is illegal. The actual decision by the majority was that the impugned provisions were quite valid and in coming to that conclusion there was an elaborate discussion on the question of the delegation of legislative power and statements by all the Judges as to what would amount to delegated legislation and what would not. Though a reading of the different judgments might enable one to know the whole law on the subject, the difficulty comes in only in the application of the principles laid down to particular kinds of legislation. The same cases are relied upon for different positions and ultimately it is a matter for decision in each case. No doubt the principles to be applied have been very well clarified in the case. On a question, as to when a law becomes operative, the Supreme Court held in *Harla* v. *The State of Rajasthan*[4], that natural justice required that before a law can become operative it must be promulgated or published *i.e.*, it must be broadcast in some reasonable way so that all men may know what it is and when a law is not so promulgated it would not be a law validly made. A company incorporated under the Indian Companies Act, was held in *Narasaraopeta Electric Corporation, Ltd.* v. *The State of Madras*[5], not to satisfy the requirements of the definition of a "citizen" in Article 5 of the Constitution and that as such the company cannot invoke Article 19 of the Constitution. To the same effect are also observations in *Sree Meenakshi Mills, Ltd.* v. *State of Madras*[6]. In laying down the scope of Article 13 (1) of the Constitution, the Supreme Court in *Keshavan Madhava Menon* v. *The State of Bombay*[7], has said that Article 13 (1) has no retrospective effect but is wholly prospective in its operation and further that it does not in terms make the existing laws which are inconsistent with the fundamental rights void *ab initio* or for all purposes. Its effect was stated to be only to nullify or render all inconsistent existing laws ineffectual or nugatory and devoid of any legal force or binding effect only with reference to the exercise of fundamental rights on and after the date of the commencement of the Constitution. The result of so holding was that proceedings commenced under an Act (in this case Press Emergency Powers Act), before the commencement of the Constitution would not be affected by the Constitution coming into force even though the provisions of the Act may become void with respect to the exercise of any of the fundamental rights after the Constitution came into force.

1. (1951) 2 M.L.J. 511.
2. 1951 S.C.J. 527.
3. (1949) 2 M.L.J. 356 : 1949 F.L.J. 225.
4. 1951 S.C.J. 735.
5. (1951) 2 M.L.J. 277.
6. (1951) 2 M.L.J. 383.
7. (1951) 1 M.L.J. 370 : 1951 S.C.J. 182.

The nature of the right to equal protection of laws guaranteed to every citizen by Article 14 of the Constitution was the subject-matter of a number of decisions both by the Supreme Court and the High Court. In *Charanjit Lal* v. *The Union of India*[1], though it was held by the majority that the particular legislation in question, namely, the Sholapur Spinning and Weaving Company (Emergency Provisions) Act, 1950, was not shown to have transgressed the scope of constitutional inhibition contained in Article 14, the Judges of the Supreme Court have given their opinion as to when a legislation can be said to be discriminatory and the scope of the presumption in favour of the constitutional validity of a law made by a competent Legislature. The difference in rates of income-tax arising by reason of pending proceedings being continued according to the law of the Integrating States prior to the integration into the State of Pepsu was held in *Ramji Lal* v. *Income-tax Officer, Mohindar Garh*[2], not to be discrimination brought about by the Pepsu General Provisions (Administration) Ordinance, 2006, but by the fact that there was a levy of income-tax in some States prior to integration and no such levy in other States. Moreover, it was pointed out, the provision in the Ordinance that pending proceedings should be concluded according to the law applicable at the time when the rights or liabilities accrued and the proceedings commenced was a reasonable law founded upon a reasonable classification of the assessees which is permissible under the equal protection clause to which no exception could be taken. In *The State of Bombay* v. *Balsara*[3], it was held by the Supreme Court that section 39 of the Bombay Prohibition Act, 1949, could not be attacked on the ground that its provisions violate Article 14 of the Constitution in that the concession shown to warships, troop-ships and military and naval messes and canteens violates the principle of equality before the law. It was pointed out that there was nothing wrong *prima facie* in the Legislature according special treatment to persons who form a class by themselves in many respects, *i.e.*, military and naval forces and who have been treated as such in various enactments and statutory provisions. In *V. G. Rao* v. *The State of Madras*[4], it was held by the majority that the Criminal Law Amendment Act, as amended by Criminal Law Amendment (Madras) Act, XI of 1950 did not contravene Article 14 of the Constitution as the Act itself did not discriminate between persons. Though the procedure laid down in the Amending Act was different from the procedure which obtains in the case of other offences, it was held that it amounted to classification and that such a classification cannot be said to be discriminatory. There is an elaborate statement of the law as to what the phrase equality before the law used in Article 14 means in *Krishnamachary* v. *Venkateswaran*[5], in which it was held that the provisions of the Madras Agriculturists Relief Act does not offend against the principle of equal protection before the law. That the discrimination that may appear apparent in the Madras Hindu (Bigamy Prevention and Divorce) Act, 1949, in that it makes a discrimination between Hindus in the matter of marrying more than one wife was not based upon religion *only* and so would not offend Article 15 of the Constitution was the opinion expressed in *Srinivasa Iyer* v. *Saraswati Ammal*[6]. The fundamental right guaranteed under clauses (2) and (3) of Article 16 was held to be infringed by the Madras Communal G.O. regulating the recruitment to the office of District Munsiff by the Supreme Court in *Venkataramana* v. *State of Madras*[7], because the ineligibility created in regard to a Brahmin was based only on the ground of his being Brahmin and is not sanctioned by clause (4) of Article 16. In *State of Bombay* v. *Balsara*[3], the Supreme Court pointed out that the prohibition against "commending" any intoxicant is a curtailment of the right to freedom of speech and expression guaranteed under Article 19 (1) (*a*) and would not be saved by clause (2) of Article 19 and on that ground declared the provisions of section 23 (*a*) and 24 (1) (*a*) of the Bombay Prohibition Act as *ultra vires* the State Legislature. In holding that section 4 (1) (*d*) of

1. (1951) S.C.J. 29.
2. (1951) 1 M.L.J. 384 : 1951 S.C.J. 203.
3. (1951) 2 M.L.J. 141 : 1951 S.C.J. 478.
4. (1951) 1 M.L.J. 628 (F.B.).
5. (1951) 2 M.L.J. 366.
6. (1951) 2 M.L.J. 649.
7. (1951) 1 M.L.J. 625 : 1951 S.C.J. 318.

the Press (Emergency Powers) Act, 1931, *ultra vires* the fundamental rights guaranteed under Article 19 (1) (*a*) in *Srinivasa Bhat* v. *State of Madras*[1], the Full Bench of the Madras High Court followed the decisions of the Supreme Court in *Ramesh Thappar* v. *The State of Madras*[2] and *Brij Bhushan* v. *State of Delhi*[3], and further stated that freedom of speech and expression would include the liberty to propagate not only one's own views but also the right to print matters which are not one's own but have either been borrowed from someone else or printed under the directions of that person. The impugned legislation was held not capable of being saved by the reservations relating to permissive legislation contemplated by Article 19 (2) of the Constitution. In *Vengan, In re*[4], in holding that picketing and dissuading customers from purchasing in North Indian's shop would not be within the fundamental rights of freedom of speech and expression the Court rightly pointed out that the Courts will be slow to recognise and uphold an extension of a fundamental right which infringes and violates another fundamental right, namely, to carry on one's own trade or business. That section 61 (3) of the Income-tax is in the nature of a reasonable restriction on the exercise of the right under Article 19 (1) (*g*) in the interests of the general public and so valid was the point decided in *Chandrasekhara Reddi* v. *Commissioner of Income-tax*[5]. While a notification under clause 18 of the Cotton Control Order, 1950, prohibiting export of cotton outside an area without permission of the Government was held would fall under Article 19 (5), the Notification under clause 6 of the Cotton Control Order, 1950, prohibiting sale or purchase of cotton unless it is sold to specified "nominees" would not be a reasonable restriction on the fundamental rights mentioned in Article 19 (1) (*g*)—*Kandaswami Reddiar* v. *Textile Commissioner, Government of India*[6]. In *Krishnan* v. *The State of Madras*[7], Article 22 (4) was held not to be affected by the Preventive Detention (Amendment) Act, 1951, sections 9 and 11. The scope and effect of Article 22 (5) and (6) of the Constitution was the subject-matter of consideration by the Supreme Court in *State of Bombay* v. *A. R. S. Vaidya*[8], and *Tarapa De* v. *State of West-Bengal*[9], and the scope and extent of the rights of a person detained in preventive detention to be supplied the grounds of his detention came in for an elaborate examination. The rights of detained person to be furnished with "the grounds on which the order has been made" and to be afforded "the earliest possible opportunity of making a representation against the order" were pointed to be though separate and distinct were still connected with each other. But the test to be applied in respect of the contents of the grounds for the two parts are quite different and when there is an infringement of the two rights the detenu is entitled to approach the Court and even if the infringement of the second part of the right is established he is bound to be released by the Court. The further point decided in the first of the two cases mentioned above was that there might be communication of supplemental grounds provided they do not make a new ground. The judgment under notice finally concludes by saying that from the fact that Article 22 (6) give a right to the authorities to withhold facts which they consider not desirable to be disclosed in the public interest, it does not follow that what is not stated or considered to be withheld on that ground must be disclosed and if not disclosed there is a breach of fundamental right. These principles have been followed and emphasised in the second of the cases. The scope of the right under Article 29 (2) of the Constitution, came in for an authoritative pronouncement by the Supreme Court in *The State of Madras* v. *Champakam Dorairajan*[10], and it was decided that the right to get admission into any educational institution of the kind mentioned in Article 29 (2) is a right which an individual citizen has as a citizen and not as a member of any community or class of citizens and that this right is not to be denied to the citizen on grounds only of religion, race, caste,

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1. (1951) 1 M.L.J. 115 (F.B.).
2. (1950) 2 M.L.J. 390 : 1950 S.C.J. 418.
3. (1950) S.C.J. 425.
4. (1951) 2 M.L.J. 241.
5. (1951) M.L.J. 565.
6. (1951) 2 M.L.J. 658.
7. (1951) 2 M.L.J. 105 : 1951 S.C.J. 453.
8. (1951) 1 M.L.J. 389 : (1951) S.C.J. 208.
9. (1951) 1 M.L.J. 431 : (1951) S.C.J. 233.
10. (1951) 1 M.L.J. 621 : 1951 S.C.J. 313.

language or any of them. The Judges conclude by saying that if in spite of his having the necessary academic qualifications a citizen is refused admission only on grounds of religion, race, caste, language or any of them, then there is a clear breach of his fundamental right. The result was that the classification in Madras Communal G.O., regulating admission to colleges was held to proceed on the basis of religion, race and caste and was opposed to the Constitution and constituted a clear violation of the fundamental right guaranteed to the citizen under Article 29 (2) and is therefore void under Article 13. It may be incidentally mentioned that this confirmed the decision of the High Court in *Champakam Dorairajan* v. *The State of Madras*[1] and the argument that Article 46 can be relied on to save the G.O., was negatived with the remark that it cannot override the provisions of Article 29 (2) as the directive principles of State Policy cannot override the provisions found in Part III of the Constitution and they have to conform to and run as subsidiary to the chapter on fundamental rights. Collection of taxes would not amount to deprivation of property within the meaning of Article 31 (1) of the Constitution was the decision in *Ramjilal* v. *Income-tax Officer, Mohindar Garh*[2], and further that clause (1) of Article 31 must be regarded as concerned with deprivation of property otherwise than by the imposition of collection of taxes. The protection against imposition and collection of taxes by authority of law would according to the decision come under Article 265 and not Article 31 (1). Articles 31-A and 31-B introduced by the Constitution (First Amendment) Act, 1951, do not according to *Shankar Prasad* v. *Union of India*[3], either in terms or effect seek to make any change in Article 226 or in Articles 132 and 136 and that the powers of the High Court or the Supreme Court are not in any way affected by the new Articles. The question as to the meaning of the expression 'final order' in Article 133 was fully discussed in *Ramaswamy Chettiar* v. *O. R., Ramanathapuram*[4] and it was held that the expression has to be given the same meaning in civil and criminal cases, that is, it must be an order which finally determines the points in dispute and brings the case to an end. The test laid down was, that the finality must be in relation to the suit, the fact that the order decides an important and even a vital issue by itself not being material, unless the decision puts an end to the suit. Applying the principles it was held that a decision of the High Court reversing a decision of a subordinate Court holding that an execution petition is not barred and remanding the execution petition for further hearing was not a final order within the meaning of Article 133. It was further pointed out that it cannot be said that leave could be granted under sub-clause (*c*) of Article 133 (1) even if the order is not a final one. A Full Bench has tried to give an authoritative decision on the meaning of the words "substantial question of law" in *Subba Rao* v. *Veeraju*[5]. While deciding that it cannot be said that any question of law, a decision on which may affect materially the rights of the parties is a substantial question of law, it was pointed out that it was neither possible nor useful to attempt to exactly define terms like "substantial", "reasonable" and "just and equitable" and that it ultimately resolves itself into their meaning that the Court considers to be substantial, reasonable or just and equitable. Where a Court thinks it necessary to deal with a question of law at some length and discuss alternative views which can be taken on the point, such a question was held would be a substantial question of law. A point of law practically covered by the decision of the Privy Council or Supreme Court, would not be a substantial question. Even if a question of law is not important or difficult, if there is room for reasonable doubt or difference of opinion on the question then it would be substantial question of law. The conditions under which leave to appeal to the Supreme Court would be granted under Article 134 (1) (*c*) were stated in *Narayan* v. *Kesappa*[6], to be practically the same as the conditions which ought to exist for the Supreme Court to grant special leave to appeal. Such leave can be granted only in those cases where special circumstances are shown to exist and unless it is shown that exceptional circumstances exist and that severe

1. (1950) 2 M.L.J. 404 (F.B.).
2. (1951) S.C.J. 203 : (1951) 1 M.L.J. 384.
3. (1951) 2 M.L.J. 683 : 1951 S.C.J. 775.
4. (1951) 2 M.L.J. 479.
5. (1951) 2 M.L.J. 222 (F.B.).
6. (1951) 1 M.L.J. 296.

and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against, leave to appeal cannot be granted. In *Sheriff* v. *Govindan*[1], it was pointed out that merely because of the restricted and limited right of appeal to the Supreme Court under Article 134 (1), it could not be said that the Supreme Court is a Court of Criminal appeal against the decisions of the High Court in Criminal matters. The actual decision was that when the High Court orders the prosecution of certain police officers under section 193, Penal Code, there is no automatic right of appeal to the Supreme Court under section 476-B of the Criminal Procedure Code against such an order. The Judges conclude by saying that the right of appeal in criminal matters to the Supreme Court is exclusively governed by Article 134 of the Constitution. In *Janardhan Reddy* v. *The State*[2], it was held that under Article 136 the Courts which passed the judgments or sentences must be Courts within the territory of India and so judgments and sentences passed by the Hyderabad High Court before the 26th of January, 1950, cannot be the subject-matter of a special appeal to the Supreme Court. As to when directions in the nature of *mandamus* would be issued it was held in *Sekkilar* v. *Krishnamoorthy*[3], that though the provisions of Article 226 were apparently wide, directions in the nature of *mandamus* should not issue except to a public officer or quasi-public officer who is under an obligation, statutory or otherwise, to do or refrain from doing anything which is likely to interfere with the rights of persons. Though the Principal of college, maintained out of funds of public trust may be a quasi-public officer, it was held, that the High Court will not interfere with his discretion in the matter of maintenance of discipline of the college (In this case an order directing a student, to leave the college). In *Kallumattam Thippaswami, In re*[4], a warning was given that Article 226 of the Constitution should not be construed so as to replace the ordinary remedies by way of a suit and application available to the litigant under the general law of the land, and the fact that the Court in which such a remedy could be asked is closed for the vacation would not render the Article applicable. The scope of the powers of High Court has been considered in dealing with the High Court and its powers and would be redundant here. The scope and applicability of Articles 368, 379, and 392 came up for consideration before the Supreme Court when the question of the validity of the Constitution (First Amendment) Act, 1951, was raised in *Shankar Prasad* v. *Union of India*[5], and it was pointed out that it was not correct to say that Article 368 is a complete code in respect of the procedure provided by it and that Article 379 must be viewed and interpreted in the wider perspective of the entire scheme of the constitutional provisions in regard to Parliament and not in an isolated relation to Article 368 alone. According to the decision, the terms of Article 368 are perfectly general and empower Parliament to amend the Constitution without any exception whatever and that Article 13 (2) does not affect amendments under Article 368. It was finally held that the new Articles being essentially amendments of the Constitution, Parliament alone had the power of enacting them and that it did not matter that the laws thus saved relate to matters covered by List II. As a result of the all-embracing words in Article 363 (1), it was held in *State of Seraikella* v. *Union of India*[6], that it clearly overrides Article 374 (2) also and that the result is that Article 363 (1) is the controlling Article over Article 374 (2) also. According to the decision under notice, Article 374 (2) cannot be read as giving the Supreme Court an extended jurisdiction in regard to cases removed to it from the Federal Court and that as such the Supreme Court would not have jurisdiction to decide suits filed in the Federal Court relating to disputes regarding instruments of accession executed by certain States before the commencement of the Constitution. An interesting point as to whether the decisions of the Federal Court on points of law are binding on the High Courts after the Constitution came into force was answered in *Arumugham* v. *The State of Madras*[7], in the affirmative on an interpretation of Article 374 (2) of the Constitution.

1. (1951) 2 M.L.J. 501.
2. (1951) S.C.J. 98.
3. (1951) 2 M.L.J. 568.
4. (1951) 2 M.L.J. 171.
5. (1951) 2 M.L.J. 683 : (1951) S.C.J. 775.
6. (1951) S.C.J. 425.
7. (1951) 1 M.L.J. 169.

Criminal law.

The crucial point of time for deciding whether the benefit of section 84, Penal Code, should be given or not was stated to be, the material time when the offence takes place, according to the decision in *Govindaswamy Padayachi, In re*[1], which also laid down the conditions when section 84 should be applied. Abnormality either before or after the commission of the crime would not be relevant. The fundamental principles to be observed by Courts in convicting persons accused in a rioting case against a large number of persons were stated very elaborately in *Arulanandu, In re*[2]. In *Ponniah, In re*[3], it was held that a commissioner appointed by a Court to divide the properties by metes and bounds in a partition suit would be a public servant within the meaning of section 21 of the Penal Code and as such an obstruction to his proceedings would be an offence under section 186 of the Penal Code. In considering the question of the application of sections 34 and 302 it was observed in *Ramaswami, In re*[4], that a common intention to use loaded revolvers for the purpose of killing, if necessary, has to be presumed against bandits and robbers who are armed with these weapons and if a man is killed the robbers so armed and acting in concert are all clearly guilty of murder under section 302 read with section 34 of the Penal Code though each may not have actually fired a shot. In the case of murder of some and attempt to murder others the extreme penalty was held not necessary where some kind of hallucination or frenzy might have been working on the mind of the accused at the time of murder in *Palaniswami Goundan, In re*[5]. According to the decision in *Palani Mooppan, In re*[6], where a fatal injury is inflicted by the accused on a vital portion of the deceased's body with a deadly weapon in the course of a sudden and unexpected quarrel, a conviction under section 304 (2) of the Penal Code would be justified. In *Intoor John* v. *State*[7], it was held that a very high degree of negligence is required to be proved before a charge under section 304 of the Code is established and in that case the driving of a double-bullock-cart was so rash and negligent that a conviction under section 304-A was upheld. An offence under section 341 could not be said to be committed by mere words without any physical obstruction as observed in *Attappa Goundan, In re*[8]. There is an interesting discussion in *Boya Chinnappa*[9], as to whether in regard to an offence under section 375, Penal Code, corroboration of the evidence of the prosecutrix is necessary. The ingredients of the offence of cheating under section 420 was stated to be, deception of any person and fraudulently or dishonestly inducing that person to part with property in *Public Prosecutor* v. *Vedantam*[10]. According to the decision in *Doraiswami Reddiar, In re*[11], section 477-A of the Penal Code only requires the falsification of accounts with intent to defraud and that it does not require any deprivation of property. In *Marthamma, In re*[12], it was decided that when a Hindu becomes a Christian and married a Christian lady and on reconversion to Hinduism marries a Hindu lady he will not be guilty of an offence under section 491 of the Penal Code. That statements in affidavit in support of application for transfer being allegations made for the protection of the interest of the party making it would be governed by exception 9 to section 499, if made in good faith, was the point decided in *Aravamudha Aiyangar* v. *Santhana Krishnan*[13].

Evidence.

That a confession made by an accused to a police officer though it cannot be used against the accused it may be used in favour of the accused was the point of decision in *Mottai Thevar*, In re[14]. In that case the only extenuating circumstances were found in the confession made by the accused to the police which was

1. (1951) 2 M.L.J. 356.
2. (1951) 2 M.L.J. 446.
3. (1951) 2 M.L.J. 191.
4. (1951) 2 M.L.J. 630.
5. (1951) 1 M.L.J. 291.
6. (1951) 1 M.L.J. 679.
7. (1951) 2 M.L.J. 54.
8. (1951) 1 M.L.J. 13.
9. (1951) 1 M.L.J. 110.
10. (1951) 1 M.L.J. 554.
11. (1951) 1 M.L.J. 691.
12. (1951) 1 M.L.J. 694.
13. (1951) 2 M.L.J. 229.
14. (1951) 2 M.L.J. 605.

also the first information report and it was held that the Court was entitled to use the confession in favour of the accused, though it was made to the police. Justice Mack, one of the Judges, had some remarks to make regarding the operation of sections 25 to 27 of the Evidence Act while the other judge, Justice Somasundaram expressed his inability to share the views of his learned brother. As regards the admissibility of deposition given in the preliminary inquiry it was held in *Bora Narasimhalu*, In re[1], that what is contemplated by section 33 of the Evidence Act was only an opportunity to cross-examine the witness and not an effective exercise of it and that all that a Court would have to do is in such cases to exercise caution before admitting such a statement. It was pointed out that it could not be postulated that in every case where the accused is not represented by counsel and could not submit the witness to a searching cross-examination he had no opportunity to cross-examine and therefore that the evidence of the witness should not be admitted under section 33 of the Evidence Act. The mode of proof of an order passed by the Government has to be by the order itself being filed because no secondary evidence of the order would be permissible without the conditions of section 65 of the Evidence Act being complied with—*Ragaviah* v. *The State*[2]. As to when the presumption under section 106 of the Evidence Act arises it was held in *Vella Pillai*, In re[3], that where goods have been entrusted to a carrier for being booked and he fails to book them and they are lost, the carrier is in especial knowledge and is bound to explain their missing under section 106 of the Evidence Act and when he fails to explain, the presumption under section 106 of the Act can be applied against him. A person who has special knowledge of a thing namely, certain articles supplied under a permit for a purpose, cannot when he does not apply the materials for that purpose escape liability for the contravention of the conditions of the permit from the mere fact that the prosecution is not able to prove where the articles in question were and how they were disposed of according to the decision in *Public Prosecutor* v. *Ramaswami*[4]. It was further emphasised that Courts should never fail to apply section 106 of the Evidence Act to cases of special knowledge and burden in similar cases. As to when section 124 of the Evidence Act could be applied it was pointed out in *Appa Rao* v. *Surya Prakasa Rao*[5], that it could be applied only when the communication is made to a public officer in official confidence and that statements made by witnesses in a departmental enquiry regarding the conduct of a police officer cannot be held to be made in official confidence with the result that in a subsequent prosecution those statements could be used by the accused and no privilege can be claimed in respect of them. The practice of Judges and Magistrates questioning the witnesses as if they were cross-examining counsel was strongly deprecated in *Sivasubba Nadar*, In re[6], as being not only opposed to section 138 of the Evidence Act, but also as being unfair to the accused. It was further held that the Judge's power to put questions under section 165 of the Evidence Act was not intended to be used in such a manner.

Torts.

In the case of an action for damages by a passenger in a taxi injured in a collision against the owner of the taxi it was pointed out in *Mrs. Halligua* v. *Mohansundaram*[7], that the theory that damages at law could not be proved in respect of personal injuries unless there was some injury which may be called "bodily" or 'physical', but which

1. (1951) 2 M.L.J. 478.
2. (1951) 2 M.L.J. 52.
3. (1951) 2 M.L.J. 53.
4. (1951) 2 M.L.J. 199.
5. (1951) 1 M.L.J. 526.
6. (1951) 1 M.L.J. 207.
7. (1951) 2 M.L.J. 471.

necessarily excluded an injury which was only mental was wrong at the present day. The fact that a policy of Motor Insurance restricted the liability only to "personal injuries" will not help the insurance company according to this decision to escape liability for damages in cases of nervous shock as a result of the accident because if by reason of an acute shock to the nervous system the activities of the body are impaired and incapacitated from functioning normally, there is clear "bodily injury". No doubt a qualification was added that it is only shock of such description which can be measured by direct consequences on the bodily activity which can form the basis for an action in damages and that it is not possible to lay down any hard and fast rule and each case has to be dealt with on its own merits.

Hindu Law.

The categories of rights in a joint Hindu family consisting of a father and sons were said to be three in *Pulleswara Rao* v. *Suramma*[1], namely, the share of the father, the share of the sons and the capacity of the father to sell the share of the sons under certain circumstances. According to that decision when the father is adjudicated an insolvent it is only the first and third rights that vest in the Official Receiver and that when a creditor is proceeding against the second right, the sons cannot compel the creditor to implead the Official Receiver so long as the second right has not been disposed of by the Official Receiver in exercise of the second right. As regards the effect of division by metes and bounds in respect of some items upon other items unpartitioned at the division it was held in *Kannan* v. *Anbu Kurup*[2], that no distinction could be drawn between a joint Hindu Family under the Mitakshara Law and a Malabar Tarwad. After an elaborate examination of the relevant texts and case-law on the matter it was held in *Govindarajulu* v. *Balu Ammal*[3], that the principle of representation recognised under Hindu Law of the son, grandson and great grandson taking the self-acquired properties of the father together could not be extended to the case of an illegitimate son of a legitimate son and that accordingly the illegitimate son of a predeceased legitimate son of the propositus was not entitled to inherit in the right of his putative father on the principle of representation. In *Sooranna* v. *Venkataratnam*[4], it was held that no person can claim an estate as heir of a still-born child because the child in embryo should be born alive in order to be invested with a right. It was pointed out that the course of inheritance cannot be diverted by the mere foetal existence of a child not born alive. In discussing the question as to the preference if any, between a married daughter with children and married daughter without children in regard to Stridhana succession, the texts and authorities were reviewed in *Rajamma* v. *Padmavatamma*[5] and it was held that there is no rule of Hindu Law governing the succession of daughters to the stridhana of their mother under which a childless married daughter is entitled to preference over a married daughter with children when both are equally poor. It was pointed out that there are only two rules of preference, namely, the rule which prefers unmarried daughters to married daughters and the rule which prefers unprovided daughters to provided daughters and that there was no third rule which lays down a preference among equally provided or unprovided daughters, namely that among them the issueless should be preferred to those with issue. *Yegnanarayana Sastri* v. *Lakshminarayana*[6], the law in regard to compromise of a litigation by a widow and its binding nature was considered and it was laid down that while a Hindu widow or other limited owner has power to compromise claims against the estate repre-

1. (1951) 1 M.L.J. 168.
2. (1951) 1 M.L.J. 493.
3. (1951) 2 M.L.J. 209.
4. (1951) 2 M.L.J. 664.
5. (1951) 2 M.L.J. 487.
6. (1951) 1 M.L.J. 502.

sented by her, to be binding on the reversioners, it must be *bona fide*, fair and reasonable or for the benefit of the estate and not for the personal advantage of the limited owner at the expense of the estate. In such a fair compromise the alienation involved in the compromise would also bind the reversioners because the alienation cannot be considered apart from the compromise. If the arrangement or settlement is not *bona fide*, any property which the claimant takes from the widow under such an arrangement will be held by him only as an alienee from a limited owner and with no higher rights. The right of reversioner in whose favour the widow has surrendered the estate to recover possession of property which the limited owner had permitted a stranger to be in possession was examined in *Bala Tirupura Sundara Rao* v. *Kotayya*[1] and it was observed that as a surrenderee is not allowed to displace the title of the alienee holding the property under an alienation by a limited owner which was not for a necessary binding purpose, on the same analogy a person who had acquired title by adverse possession must be protected, the right of the reversioner to sue to recover possession being postponed to the death of the limited owner. But in cases where possession was permissive, it will be open to the surrenderee to recover the property. According to the decision in *Krishnamraju* v. *Reddamma*[2], in the absence of evidence that lands set apart for the maintenance of a female member of a Hindu family were not to be resumed on her death, the presumption is that they are resumable. The Supreme Court in *Angurbala Mullick* v. *Debabrata Mullick*[3], had to consider the applicability of the Hindu Women's Rights to Property Act to the case of a devolution of shebaitship. It was pointed that there was nothing in any of the provisions of that Act from which an inference could be drawn that the expression "property" as used in section 3 (1) of the Act has a limited or restricted interpretation and is not applicable to shebaitship which is recognised as property in Hindu Law and that succession to shebaitship even though there is an ingredient of office in it follows succession to ordinary secular property. It was held that it is the general law of succession that governs succession to shebaitship as well and that while the general law has now been changed by reason of the Act, there was no reason why the law as it stands at present should not be made applicable to the case of devolution of shebaitship. That in a suit by Hindu widow for a share in a mortgage debt under the Hindu Women's Rights to Property Act (before it was amended in Madras in 1947), the widow would be entitled to her share as the mortgage debt is partible was the point decided in *Veerayanna* v. *Venkanna*[4]. A Full Bench has ruled in *Ramaiya Konar* v. *Mottayya Mudaliar*[5], that a Hindu married woman living in adultery at the time of her husband's death is disqualified by reason of her unchastity from succeeding to his interest in the joint family property under section 3 of Hindu Women's Rights to Property Act. In coming to the above conclusion it was pointed out that the Act has not expressly or by necessary intendment done away with the personal disqualification, like unchastity imposed by Hindu Law on widows claiming to succeed to the estate of their deceased husband, and it was further remarked that the significance of the words "to the contrary" following the words 'notwithstanding any rule of Hindu Law' in section 2 of the Act is that it is only such rules of Hindu Law as are contrary to provisions of section 3 of the Act, that stand abrogated and that there was nothing in section 3 of the Act prescribing a rule contrary to the well-established rule of Hindu Law that the chastity of a widow is a condition precedent to her inheriting the estate of her husband.

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1. (1951) 2 M.L.J. 39.
2. (1951) 1 M.L.J. 49.
3. 1951 S.C.J. 395.
4. (1951) 1 M.L.J. 364.
5. (1951) 2 M.L.J. 314 (F.B.).

Mahomedan Law:

In considering the place of suing by a Mahomedan wife in respect of interim maintenance where her husband had pronounced an irrevocable *thalak*, it was held in *Mahommed Ibrahim* v. *Jaithoon Bivi Ammal*[1], that an irrevocable *thalak* only terminates the wife's right to conjugal relationship and makes the venue for filing a suit for restitution of conjugal rights, if any, subsist at the place where the *thalak* was pronounced. But as the right to interim maintenance and the return of clothes and jewels arises out of the irrevocable *thalak* it stands on a different footing. The wife can file the suit at the place where she resides at the time of the divorce and receives notice thereof.

Insolvency Law.

According to the decision in *Seeram Appali Raju* v. *O.R., West Godavari*,[2] an order for payment made on an application under section 4 of the Provincial Insolvency Act is tantamount to a decree and if after an annulment of the adjudication the insolvent fails to apply for execution and three years elapse, the Official Receiver cannot on the setting aside of the annulment seek to execute the decree. As regards the right of a person to apply under Or. 1, r. 10, Civil Procedure Code for being added as a party to a creditor's petition it was pointed in *Jaleel Sahib* v. *Seeniappa Ramaswamy Mudaliar*,[3] that under section 5 of the Provincial Insolvency Act the Court exercising insolvency jurisdiction can follow the procedure prescribed by the Civil Procedure Code only where there is no procedure prescribed in the Act with regard to a particular matter but not when it is provided for in the Act. As a definite provision for substitution of a party has been provided in section 16 of the Act, it was held that that a creditor aggrieved by the conduct of the petitioning creditor can come in only by way of a substitution petition under section 16 of the Act and not under Or. 1, r. 10 of Civil Procedure Code to be added as a party. In *Venkatanarasu* v. *Venkatarangayya*[4], it was held that as the Provincial Insolvency Act in the case of the insolvency of a Hindu father makes no distinction between the share of the father and his right and capacity to sell his sons' shares, the control which the Official Receiver would have over the moneys realised from both the categories would be the same and those funds would be at his disposal for payment of the creditors of the insolvent and if any surplus is left, it will revert to the joint family unless there has been in the meantime a disruption of the family. Where during the pendency of a suit for the specific performance to execute a mortgage a petition is filed to adjudicate the defendant as an insolvent and an *ex parte* decree is passed and the defendant is subsequently adjudicated insolvent the decree for specific performance would not be binding on the Official Receiver who was not a party to the suit—*O.R., East Tanjore* v. *Sait Jessasingh Chaturbhuj das*[5]. In *Kolandayammal* v. *Sinna Velappa Goundan*[6] the Provincial Insolvency (Amendment) Act, 1948, (which added section 28-A) was held to be *intra vires* the Dominion Legislature. In considering the scope of section 28-A of the Provincial Insolvency Act it was pointed out in *Seethayya* v. *Venkanna*[7], that it is wrong to think that section 28-A by recognizing retrospectively the power of the Official Receiver in the case of insolvency of the father to dispose of his son's share in the right of the father, saves the bar of limitation against the son.

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1. (1951) 1 M.L.J. 449.
2. (1951) 1 M.L.J. 551.
3. (1951) 1 M.L.J. 87.
4. (1951) 1 M.L.J. 145.
5. (1951) 1 M.L.J. 200.
6. (1951) 2 M.L.J. 438.
7. (1951) 2 M.L.J. 299.

In *Sambayya* v. *O.R., Guntur*[1], it was held that the mere order on an execution petition sending for the moneys of the judgment-debtor would not tantamount to an order realising the assets within the meaning of section 51 (1) of the Provincial Insolvency Act and that therefore when a petition to adjudicate the judgment-debtor is filed a few days after such an order and the money is not in fact received by the Court before the date of partition, the prior order sending for the moneys of the judgment-debtor cannot have the effect of bringing into operation the exception referred to in the section. Though a mortgage is annulled under sections 53 and 54 of the Provincial Insolvency Act as not fully supported by consideration and as intended to be a fraudulent preference of some creditors over others, according to the decision in *Venkatarama Naicker* v. *Ramaswamy Naicker*[2], the mortgagee under that mortgage could rely on the debts included in the mortgage deed and prove those debts in insolvency as an unsecured creditor. The Full Bench in *Official Receiver of Ramanathapuram* v. *Chellappa Chettiar*[3], has ruled that neither a creditor nor an Official Receiver is a "person aggrieved" by a decision of the Insolvency Court declining to make a complaint against a debtor under section 70 of the Provincial Insolvency Act and has no right of appeal under section 75 (1) of the Act. But it was also remarked that the case of a debtor against whom a complaint is made might stand on a different footing. Where a debt has been settled or given up years ago, any dividend claimed or taken away in respect of such a debt can be ordered to be put back into Court, even if the law is, that the dividend paid in respect of a genuine and subsisting time-barred debt cannot be claimed was the point decided in *Venkatasubbamma* v. *Venugopal Rao*[4].

Property Law.

According to the decision in *Parvathathammal* v. *Sivasankara Bhattar*[5], where property is in the actual possession of a usufructuary mortgagee it behoves a prospective purchaser to ascertain what all rights the person in actual possession really has in respect of the property and that if he omits to do so, and if equities exist in favour of the person in possession (for instance an agreement for sale of the property), the prospective purchaser would be bound then. The omission to make enquiries would in such a case amount to wilful abstinence or gross negligence on the part of the purchaser. One of the points decided in *Palaniappa Goundan* v. *Nellappa Goundan*[6], was that the right of a minor to question an excessive or improper alienation by the guardian, is a valuable right in the nature of property and is not a mere right to sue and as such can be validly transferred. The question whether on a purchase of *agricultural* land by private sale, the land being under a lease at the time of the sale, the rent can be apportioned between the buyer and seller under section 36 of the Transfer of Property Act came to be dealt with in *Poongavanam Pillai* v. *Subramania Pillai*[7]. After pointing out that rents and profits accruing due *before* the transfer are not legal incidents of the property transferred and if they are to be transferred, they must be assigned separately it was held that if a different intention is expressed, section 36 will have no application or if a different intention can be implied then also section 36 will have no application and that where the two above conditions do not exist, then the transferor will be entitled to the rents and profits accruing *before* the transfer and the transferee to the rents and profits *after* the transfer

1. (1951) 2 M.L.J. 271.
2. (1951) 2 M.L.J. 32.
3. (1951) 2 M.L.J. 87 (F.B.).
4. (1951) 1 M.L.J. 468.
5. (1951) 2 M.L.J. 191.
6. (1951) 1 M.L.J. 265.
7. (1951) 1 M.L.J. 69.

and the passing of the ownership to him. Such rents and profits should be apportioned under section 36, which applies to agricultural rents also. In *Subbayya* v. *Ramalakshmi*[1], it was laid down that whether a suit for maintenance is by Hindu widow or by a Hindu wife, if a charge is asked for in respect of specified property and a decree is made creating a charge, section 52 of the Transfer of Property Act would apply so as to protect the plaintiff against transfers effected *pendente lite*. The scope and applicability of section 92 (3) of the Transfer of Property Act came in for a good discussion in *Shanbatta* v. *Narayana Bhatta*[2] and the point decided was that where on a partition between the branches of a mortgagor joint family one branch is allotted more property on its undertaking to discharge the whole of the pre-partition mortgage and that branch creates a mortgage over its share (to discharge the pre-partition mortgage) with a covenant that the new mortgagee would be entitled to be subrogated to the rights of the redeemed mortgagees the last mortgagee would be entitled to be subrogated to the rights of the prior mortgagee. In coming to the conclusion on the facts, one of the points decided was that the fact that there was an agreement between the mortgagors *inter se* would not take away the right of subrogation of the subsequent mortgagees, if the requirements of section 93 (2) of the Act have been fully satisfied. Another point decided was that it cannot be said that an agreement with only one of the earlier mortgagors would not entitle the person advancing the money to be subrogated to the rights of the mortgagee whose mortgage has been redeemed and that the word "mortgagor" in section 92 (3) means a mortgagor in the singular or plural according to the circumstances. The last point decided was that a co-mortgagor is entitled to redeem the mortgage either from and out of his funds or with money borrowed from others and there is no reason or justification for denying the co-mortgagor the right to give an agreement to his lender as contemplated by the third paragraph of section 92 of the Act. The Supreme Court has ruled in *Ram Kumar Das* v. *Jagdish Chandra Deo*[3], that the rule of construction laid down by section 106 of the Transfer of Property Act to be applied when there is no period agreed upon between the parties applies not only to express leases of uncertain duration but also to leases implied by law which may be inferred from possession and acceptance of rent and other circumstances. The conditions for the applicability of section 116 of the Transfer of Property Act were stated by the Supreme Court in *Karnani Industrial Bank* v. *Province of Bengal*[4]. According to the decision, two things are necessary: (1) the lessee should be in possession after the termination of the lease and (2) the lessor or his representative should accept rent or otherwise assent to his continuing in possession. It was pointed out that the use of the word "otherwise" suggests that the acceptance of rent by the landlord has been treated as a form of his giving assent to the tenant's continuance of possession. According to the Lordships of the Supreme Court what is contemplated is that the payment of rent and its acceptance should be made at such a time and in such a manner as to be equivalent to the landlord assenting to the lessee continuing in possession. The amended section 119 of the Transfer of Property Act came in for examination in *Sitaramiah* v. *Kanakiah*[5], and while pointing out that at the same time it enlarges and limits the scope of the previous section, it was held that under the amended section the right to the return of the thing transferred is limited only to the three classes of persons specified therein and that so long as they continued to be in possession of the same. The result of so holding in

1. (1951) 1 M.L.J. 143.
2. (1951) 1 M.L.J. 596.
3. 1951 S.C.J. 813.
4. 1951 S.C.J. 407.
5. (1951) 1 M.L.J. 701.

that case was that the relief was held to be not available where persons in possession were found to be trespassers and not either the original parties or their legal representatives or transferees from them without consideration. The Judge in deciding so felt that there may be a lacuna but that on the wording of the section that was the only construction possible.

Madras Agriculturists Relief Act.

In *Krishnamurthi* v. *Venkateswaran*[1], it was held that the provisions of the Madras Agriculturists Relief Act were not repugnant to any of the provisions of the Constitution of India and were certainly *intra vires* thereof. A Full Bench in *Arunachalam Chettiar* v. *Narayanaswami Gounder*[2] has held that a debtor who was an insolvent on 1st October, 1937 and also on 22nd March, 1938, but whose adjudication was subsequently annulled has a saleable interest in the property on the crucial dates with reference to his status as an agriculturist. According to the decision in *Venkatappayya* v. *Punnayya*[3], "interest" as defined in section 3 (iii-a) of the Madras Agriculturists Relief Act would mean anything paid or intended or agreed to be paid over and above the principal sum borrowed and that where produce delivered by the debtor to the creditor is of higher value, would certainly be a thing paid in excess of what has been borrowed and the excess would be interest within the meaning of the section. It was pointed out that sub-cl. (iii-a) of section 3 cannot be construed in the light of Expln. II added to section 8 of the Act.

Madras Estates Land Act.

The decision in *Janakirama Sastri* v. *Gopalam*[4], makes it clear that the words "any inam village" in section 3 (2) (*d*) Estates Land Act mean a whole village granted in inam and not anything less than a village, however big a part it may be of that village, and that the definition of "village" in section 3 (19) cannot be incorporated into the definition of an "estate" in section 3 (2) (*d*). According to *Province of Madras* v. *Arunachalam Chettiar*[5], the Legislature has not intended to confer on revenue officers jurisdiction to decide questions of title to properties, and under section 20-A, though the Collector may no doubt hand over the land which he decides is not required for any communal purpose to the owner he cannot decide any dispute *inter se* between the landholder and the government in respect of the title to the property, for the question is one which is within the exclusive jurisdiction of the civil Courts.

Contracts.

With reference to an amount advanced on a promissory note for the purpose of celebrating a marriage opposed to the provisions of the Child Marriage Restraint Act, 1929, it is held in *Srinivasa Rao* v. *Raja Ram Mohana Rao*[6], that the money cannot be recovered as the purpose of the borrowing was unlawful and would fall within the scope of section 23 of the Contract Act. The distinction between wagering contracts and speculative contracts is adverted to in *Rangayya* v. *Narayana*[7], which points out that in the former, one party is to win and the other to lose upon a future event which at the time of the contract is of an uncertain nature ; and there is no intention on the part of either party to deliver or take possession of the commodities and no obligation on either to do so, there being an understandin that

1. (1951) 2 M.L.J. 366.
2. (1951) 1 M.L.J. 35 (F.B.).
3. (1951) 1 M.L.J. 21.
4. (1951) 2 M.L.J. 272.
5. (1951) 1 M.L.J. 254.
6. (1951) 2 M.L.J. 264.
7. (1951) 2 M.L.J. 393.

the buyer has only to receive from or pay to the seller the difference between the price of the bargain and the price at some future date. According to *Muthayee Achi* v. *Subbiah Chettiar*[1], the promise to which section 25 (3) refers does not require that the promisor should have known that the debt is barred and yet made the promise to pay. In *Shanmugasundara Mudaliar* v. *Sivalinga Mudaliar*[2], the distinction between a remission in *praesenti* which is suspended until a certain future event happens and an agreement in *futuro* is explained and it is held that the latter clearly requires consideration.

Company Law.

According to *Price* v. *Chandrasekharan*[3], a company incorporated under the Indian Companies Act can come to an end only in the manner provided by the Act and not by any change in the management, for instance, by the debenture trustees carrying on the business ; also an incorporated company as such cannot be the subject of a mortgage or conveyance. In *S.V.S. Nidhi, Ltd., Vellore* v. *Daivasigamani Mudaliar*[4], it is pointed out that the general body of shareholders is competent by special resolution to fix qualifications for directors other than or in addition to the holding of shares and there is nothing in the Companies Act militating against it. The decision in *Rathnavelusami Chettiar* v. *Manickavelu Chettiar*[5], holds that a suit by a person for a declaration that he has not ceased to be the managing director despite a resolution by the shareholders removing him from the post at a meeting the validity of which was challenged, is maintainable as a suit in respect of an individual wrong and not a wrong in which all the shareholders generally and as a body were interested. According to *Ananthalakshmi Ammal* v. *The H.I. & F. Trust, Ltd.*,[6] section 79 (1) (*e*) of the Companies Act must override any provision inconsistent with it in the articles of association of a company and if a shareholder's name has been entered in the register of shareholders he cannot be prevented from enjoying the right to vote on the ground that his name has not been on the register for any specified time as required in the articles of association. *Ananthalakshmi Ammal* v. *T. B. Asbestos & Paints Ltd.*[7], decides that inasmuch as section 76 confers on the Court power to call or direct the call of a general meeting of the company and section 79 (3) contemplates the giving of directions by the Court as to the manner in which the meeting should be held and conducted, the Court will have power to appoint a person to conduct the meeting who would be the chairman to preside over it. In *Lakshmi Narasa Reddi* v. *O. R. Sree Films Ltd.*[8], it is pointed out that section 101, referring to conditions for applications for and allotment of shares applies only to public companies and not to private companies and it is not necessary to produce the order of allotment to prove the validity of an entry in the register of shareholders. As to the liability of a member of the company to be included in the list of contributories under section 156, it states that it arises not *ex contractu* but *ex lege* and flows by virtue of the appearance of his name in the register of members and therefore it would be no answer for the contributory against the claim of the company to contend that the allotment is void or that he has sold his shares to another ; and in the absence of a rectification of the register by an application under section 38, the liability becomes absolute. The decision further holds that mere dishonourable conduct, like a person nominally applying for shares in order to inveigle other real shareholders into subscribing for shares, will not be a bar to a consideration of the legal objections urged by him to be made liable as contributory or as shareholder. According to *Raja of Vizianagaram* v. *Official Liquidator, Vizianagaram Mining Co., Ltd.*,[9], a foreign creditor is as much entitled to a share in the assets of an unregistered company in liquidation as a creditor resident in the country where the unregistered company is situated, neither the nationality

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1. (1951) 1 M.L.J. 573.
2. (1951) 1 M.L.J. 202.
3. (1951) 2 M.L.J. 185.
4. (1951) 1 M.L.J. 18.
5. (1951) 1 M.L.J. 5.
6. (1951) 2 M.L.J. 19.
7. (1951) 2 M.L.J. 586.
8. (1951) 1 M.L.J. 488.
9. (1951) 2 M.L.J. 535.

of the creditor nor the situs of the debt being material; and hence proof of the debts of foreign creditors cannot be expunged. Also where there is a mortgage or charge on the stock in trade of a company, which is movable property, registration under section 109 (1) is necessary and section 277-D does not take away the compulsory nature of the registration. The decision in *Andhra Paper Mills Co., Ltd.* v. *Anand Brothers*[1] holds that leave of the Court under section 171 is not necessary for setting up a counter claim and set off in a suit by the company in winding up against him, because the principle is the same whether the set off is asserted before the official liquidator or in a claim of the official liquidator in a suit filed by him; and a defendant pleading a set off, is not commencing a suit or other legal proceeding against the company within the meaning of section 171. Where after an award by an Industrial Tribunal and before declaration by Government of the award to be binding an application for the winding up of the Company was made and a provisional liquidator was appointed, and later there was a declaration by Government of the award to be binding and subsequently a winding up order was passed, *Price* v. *Chandrasekharan*[2], holds that the Government declaration is not a legal proceeding for which leave of Court is necessary under section 171. According to *Price* v. *State of Madras*[3], leave under section 179 is not a mere formality and the section is intended to prevent frivolous and wasteful litigation by the official liquidator; but there is nothing improper in the official liquidator *bona fide* believing a claim to be fair to make every preparation for the institution of a suit before applying for sanction; nor need notice of application under section 179 be given to the defendant in the proposed suit.

Specific Relief.

According to *Ramalinga Pillai* v. *Jagadammal*[4], inasmuch as the discretion exercisable under section 22 of the Specific Relief Act is not arbitrary but guided by judicial principles and capable of correction by a Court of appeal, where a decree for specific performance granted by the trial Court is reversed by the appellate Court in disregard of legal principles, the judgment of the lower appellate Court is liable to be reversed in second appeal by the High Court. In *Parvathathammal* v. *Sivasankara Bhattar*[5], it is held that the benefit of the proviso to section 27-A cannot be obtained by a person purchasing property in the possession of a usufructuary mortgagee having an agreement of sale in his favour, the purchaser having failed to make inquiries. The decision in *Andhra University* v. *Lakshmi Manoharam*[6], holds that a suit for declaration of breach of contract lying in the wrongful dismissal of the plaintiff from the defendant's service uncoupled with a claim for damage for such breach but conceived solely for the vindication of his character is maintainable. According to *Indian Mutual Life Association, Ltd.* v. *Commissioner, Corporation of Madras*[7], an applicant for mandamus having other special legal remedies under schedule IV to the Madras City Municipal Act, 1919 in respect of assessment to company's tax under the Act is not entitled to seek remedy by way of mandamus.

Stamp Act.

In *Narayana* v. *Lurudu Mareyya*[8], it is decided that an acknowledgment which does not contain an express promise to pay the debt falls within the first part of Article 1 to Schedule 1 to the Stamp Act and is therefore inadmissible in evidence under section 35 and the prohibition in proviso (*a*) applies to it.

1. (1951) 1 M.L.J. 340.
2. (1951) 2 M.L.J. 185.
3. (1951) 2 M.L.J. 499.
4. (1951) 1 M.L.J. 64.
5. (1951) 2 M.L.J. 191.
6. (1951) 1 M.L.J. 518.
7. (1951) 1 M.L.J. 706.
8. (1951) 1 M.L.J. 707.

Court-Fees.

According to *Ambika Palayakat Co.* v. *Kannappa Pillai*[1], where in a suit for the recovery of the price of goods sold the defendant claimed damages for breach of warranty, etc., the defendant can claim such damages without paying any court-fee as the amount could be considered in diminution of the price claimed. With reference to suits for redemption where the right to redeem is not in dispute in appeal but only the amount, it is held in *Gopal Pillai* v. *Viswanatha Iyer*[2], that court-fee will have to be paid on the *ad valorem* scale. The decision in *Narasamma* v. *Satyanarayana*[3], is that a suit by a party to a decree which is *ex facie* regular and within the jurisdiction of the Court, to have it declared void against the plaintiff falls within section 7 (iv-A) of the Court-Fees Act. In *Govindarajulu* v. *N. V. T. T. Co-operative Bank*[4], it is held that a suit for a declaration of a sale in execution of an award, made on default in paying mortgage money to a co-operative society, to be opposed to law does not fall within section 7 (iv-A) as the sale certificate is not a document of title securing property which the plaintiff was bound to set aside, and a court-fee of Rs. 100 will be the proper fee. According to *Seshayya* v. *Lakshmamma*[5], where the suit is for the northern half of a particular land it is in fact a suit for a specific portion of that land and court-fee is payable under section 7 (iv) (*d*). In *Parvathi* v. *Makkam Amma*[6], it is held by a Full Bench that a suit for redemption of a kanom like any other suit for redemption of a possessory mortgage can be valued under section 7 (ix) though the plaintiff incorporates a prayer for the taking of accounts and payment of arrears of rent due from the kanomdar ; and section 11 is a special provision applicable only to the suits specified therein and cannot be extended analogically to suits on mortgages or for damages. According to *Venkatasubba Rao* v. *Venkata Rao*[7], the question of court-fee should be decided by the Court at the inception before the plaint is taken on file and a scrutiny by a ministerial officer cannot be tantamount to a decision by the Court within the meaning of section 12. In *Sri Thyagarajaswami Devasthanam, Tiruvarur*, In re[8], it is pointed out that a suit to recover possession of land from the tenant after ejecting him and for arrears of rent, with the allegation in the plaint that the defendant is falsely caliming occupancy right but without any claim for a declaration of title is one by the landlord against the tenant whose tenancy was terminated and to recover possession within the meaning of section 7 (xi) (*cc*). *Oruganti Appa Rao*, In re[9], holds that where four anomalous mortgages were of the same date, of the same property, between the same mortgagors and mortgagees, and all of them were usufructuary, it is an exceptional case where it ought to be held that there is only one "subject" within the meaning of section 17.

Limitation.

According to the Full Bench decision in *Kandaswami Pillai* v. *Kannappa Chetty*[10], section 15 (1) of the Limitation Act controls section 48, Civil Procedure Code ; the word "prescribed" in section 15 (1) does not mean prescribed by the first schedule to the Limitation Act but would include a case where a period of limitation is prescribed by any general statute like the Civil Procedure Code and even otherwise the period prescribed by section 48 Civil Procedure Code should be deemed to have become a part of the Limitation Act by a process of incorporation in Articles 181 and 182. *Palaniappa Goundan* v. *Nallappa Goundan*[11], holds that the word "guardian" in Article 44 means only a lawful or *de jure* guardian and not a *de facto* guardian and hence the recovery of the property by the minor from the alienee will fall within Article 142 or Article 144. In *Thirunelakanta Mudaliar* v. *Velayudha Mudaliar*[12],

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1. (1951) 2 M.L.J. 182.
2. (1951) 2 M.L.J. 637.
3. (1951) 1 M.L.J. 436 : I.L.R. (1951) Mad. 751.
4. (1951) 1 M.L.J. 192.
5. (1951) 2 M.L.J. 72.
6. (1951) 1 M.L.J. 497 (F.B.).
7. (1951) 1 M.L.J. 73.
8. (1951) 1 M.L.J. 466.
9. (1951) 2 M.L.J. 86.
10. (1951) 2 M.L.J. 668 (F.B.).
11. (1951) 1 M.L.J. 265.
12. (1951) 1 M.L.J. 355.

it is pointed out that a suit by a contingent reversioner filed more than 6 years from the date of the knowledge of adoption by the presumptive reversioner was clearly barred under Article 118. According to *Yagnanarayana Sastri* v. *Lakshminarayana*[1], Article 125 applies to a suit by a reversioner to have a compromise by the limited owner which resulted in an alienation, declared invalid. In regard to the conditions necessary for Article 134-B to apply, *Sanyasamma* v. *Vireswaraswami*[2], holds that it is not the cessation of trusteeship generally that matters but the cessation of trusteeship by means of the three events referred to in the third column of the Article, death, resignation or removal. In *Sivaramachari* v. *Anjaneya Chetty*[3], a Full Bench has taken the view that 'appeal' in clause 2 of column 3 of Article 182 should be confined to an appeal against the decree in the suit and not extended to an appeal from any other interlocutory order in the suit or an appeal in any collateral proceeding. According to *Muthuveeranna Chettiar* v. *Muthuvenkatarama Chettiar*[4], if the execution petition is 'struck off,' 'lodged,' 'recorded' or 'closed,' while yet the reliefs prayed for or some of them remain undisposed of without being covered by final orders granting or refusing those reliefs, the petition will be deemed to continue on the file of the Court. In *Moidin Kutty* v. *Doraiswami Aiyar*[5], it is held that where an execution application is merely closed or struck off, such an order does not terminate the proceedings and a subsequent application can be treated as an application to revive the pending execution application. *Murugesam Chetty* v. *Kanniappa Mudaliar*[6], points out that an order of revivor of a decree on the original side of the High Court against two persons, when made on an application for execution against only one of them does not keep the decree alive as against the other and cannot operate against that judgment-debtor within the meaning of Article 183 of the Limitation Act.

Civil Procedure Code.

In *Lakshminarasamma* v. *Seshayya*[7], it is held that in view of the provisions of section 7 (*a*) (iii), Order 21, rule 82, and Order 38, rule 13, Civil Procedure Code, attachment and sale of immoveable property by a Small Cause Court in execution of its decree cannot be made without transfer of the decree to the original side. *Satyanarayanamurthi* v. *Narayanamurthi*[8] decides that the right of suit under section 9 cannot be taken away by a rule made under a power conferred by a scheme framed for the administration of a school, and any such rule providing an optional remedy by way of appeal to the general committee against any order of dismissal of a teacher cannot take away the right of the aggrieved person to go to a civil Court for an adjudication on his right to continue as a teacher in the school on the ground that his dismissal was void. An interesting pronouncement on the principle of *res judicata* is to be found in *Sarangapani Aiyangar* v. *Narasimhacharyulu*[9], where it is held that section 11 is not an exhaustive statement of the doctrine of *res judicata* and the principle has a wider application than is warranted by the strict language of the section and that where a suit by a reversioner for a declaration of settlement made by the daughter of last male holder as not binding on the reversion had been decreed in a subsequent suit for recovery of possession on the death of the daughter the earlier decision would operate as *res judicata* only so far as the binding character of the settlement is concerned but not so as to bar the trial of the question whether the plaintiff is the next heir to succeed to the estate of the last full owner. According to *Ramamirtham* v. *Rama Film Service*[10], section 15 has no application to the High Court exercising ordinary original jurisdiction when there is a conflict between the original jurisdiction of the High Court and the City Civil Court constituted under the Madras City Civil Courts Act. The decision in *Srirangam Municipality* v. *Palaniswami Pillai*[11],

1. (1951) 1 M.L.J. 502.
2. (1951) 2 M.L.J. 391.
3. (1951) 2 M.L.J. 245 (F.B.).
4. (1951) 1 M.L.J. 198.
5. (1951) 2 M.L.J. 506.
6. (1951) 2 M.L.J. 194.
7. (1951) 1 M.L.J. 150.
8. (1951) 2 M.L.J. 333.
9. (1951) 2 M.L.J. 464.
10. (1951) 2 M.L.J. 121 (F.B.).
11. (1951) 1 M.L.J. 281.

makes it clear that it cannot be said that every application under section 24 when made to the High Court should be made on the original side, and that an application under the section can be validly heard and disposed of by any Judge deputed by the Chief Justice to hear such applications and also that section 24 gives power to the High Court to transfer a suit to itself and afterwards retransfer it for trial to the Court in which it was originally filed after passing an interim order. In *Kondayya* v. *Official Receiver, Nellore*[1], it is held that the High Court has no power under section 24 (1) (*b*) to transfer an Insolvency Petition pending in a subordinate Court in the moffussil to the original side of the High Court. With reference to an order under section 20 of the Madras Agriculturist Debtors Relief Act, it is pointed out in *Desikachariar* v. *Ramachandra Reddiar*[2], that it complies with the characteristics of a decree and relates to its execution between the parties to the suit and is hence covered by section 47, Civil Procedure Code. *Kunhikoya Thangal* v. *Ahmad Kutty*[3], decides that an attempt to restrain the action of a judgment-debtor in cutting and selling trees on land in regard to which there is a decree for redemption of a kanom thereon, is not a matter relating to the execution, discharge or satisfaction of the decree and section 47 cannot apply. In *Vyravan Chettiar* v. *Nagaswami Aiyar & Co.*[4], it is held that under section 48, the computation of the period of 12 years should be made from the date of the appellate decree and an order dismissing an incompetent appeal cannot give a fresh starting point for the purposes of the section. A decision of much importance is *Kandaswami Pillai* v. *Kannappa Chetty*[5], holding that section 48 is controlled by section 15 (1) of the Limitation Act and that the period of 12 years mentioned in section 48 is a period of limitation. In *Kuttalalingam Pillai* v. *Chinnakannu Pillai*[6], it is held that according to the amended section 51 a Court must record its reasons in writing regarding its being satisfied that the judgment-debtor had rendered himself liable to be arrested and sent to the jail before directing his arrest and detention, and reasons should be given every time a man is ordered to be arrested and in every proceeding where he is ordered to be arrested. *Abu Packer* v. *P. S. Kurup*[7], decides that before an order for arrest is made under section 51, the judgment-debtor should be given an opportunity of showing cause why he should not be arrested. In *Karunambal Ammal* v. *Chellayya Gurukkal*[8], it is held that the earnings of the heirs of a gurukkal in a temple which are in the shape of presents by devotees for archakatvam service rendered by them are not liable to be attached as assets of the deceased gurukkal in their hands under a decree passed against them with reference to such assets. According to *Dhanlakshmi Ammal* v. *Krishnamurthi*[9], where the judgment-debtor—husband—in a maintenance decree had been committed to a prison for six months in an execution petition relating to costs and movables, and has been there for the entire period prescribed by section 58 (1), he cannot in another execution petition for recovering maintenance since accrued be again sent to prison for recurring periods of six months for recurring maintenance amounts for later periods. *Vyravan Chettiar* v. *Nagaswami Aiyar & Co.*[4], holds that the fact that the purchaser did not take possession could not confer on him higher right than that which flows from section 65. The decision in *Suryanarayana* v. *Venkatasubba Rao*[10], points out that the rule of law enacted in section 82 of the Trusts Act does not affect the provisions contained in section 66, Civil Procedure Code, that the latter section lays down an embargo on the plea of benami when it forms the basis of a suit by a person claiming to be the real owner against court auction-purchaser alleged to be a benamidar, and that as the section places a procedural bar to the enforceability of a claim based on benami which is otherwise quite legal and valid, the section will have to be construed strictly. In *Sankunni Menon* v. *South Indian Railway*[11], it is held that though section 80 is mandatory the Court

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1. (1951) 1 M.L.J. 97 : I.L.R. (1951) Mad. 763.
2. (1951) 1 M.L.J. 23.
3. (1951) 2 M.L.J. 399.
4. (1951) 1 M.L.J. 298.
5. (1951) 2 M.L.J. 668 (F.B.).
6. (1951) 2 M.L.J. 588.
7. (1951) 2 M.L.J. 175.
8. (1951) 2 M.L.J. 395.
9. (1951) 1 M.L.J. 515.
10. (1951) 2 M.L.J. 76.
11. (1951) 1 M.L.J. 463.

should not be hypercritical in examining the language used and should interpret it in a free and liberal spirit. According to *Sambayya* v. *Subba Reddi*[1], in order to enable a party to file an interpleader suit, the party should be in a position to walk out of the suit with a mere claim for costs and should not be entitled to have any other matter of contest between himself and the claimant. With reference to sections 109 and 110, Civil Procedure Code, a Full Bench has held in *Saraswathi Ammal* v. *Rajagopal Ammal*[2], that where several appeals are preferred against the decree in the same suit by different parties they should be heard together, and there can be only one decree of the High Court as an appellate Court embodying the decision in the several appeals which decree would supersede the decree of the trial Court. *Swaminatha Pillai* v. *Balasubramanya Udayar*[3], decides that interference under section 115 will not be permissible against an order rejecting an application for leave to appeal in *forma pauperis*. In *Abboy Reddiar* v. *Collector of Chingleput*[4], it is held that a revision will not lie against the order of an arbitrator appointed under section 19 (2) of the Defence of India Act as a *persona designata*, merely because a right of appeal is provided against its award. According to *Satyanarayanacharlu* v. *Ramalingam*[5], where an order directing payment of additional Court-fee in a suit is not complied with and it is followed by an order rejecting the plaint, the proper remedy is only by way of an appeal against the decree and a revision would not be maintainable. In *Moidin Kutty* v. *Doraiswami Aiyar*[6], it is recognised that though the receiver is not the owner or agent of the owner, he is yet his statutory representative and as such has a right to continue execution proceedings under section 146. *Kumaraswami Goundan*, In re[7], holds that even if section 151 by itself may not apply to proceedings under the Madras Buildings (Lease and Rent Control) Act, 1946, a quasi-judicial tribunal like the Rent Controller will have inherent jurisdiction to set right mistakes made by inadvertence and that will not amount to a review of adjudication already made. In *Ammiraju* v. *Kondalarayudu*[8], it is pointed out that sections 151 and 153 are not intended to inquire into titles of parties to properties. *Venkateswarlu* v. *Subbayya*[9], decides that the powers under section 151 can only be exercised *ex debito justitiae* and not on the mere invocation of parties or volition of Courts and so cannot be exercised to direct parties to submit to a blood test by experts where a question of legitimacy has been raised in a suit. *Fernanda* v. *Ratnasami Nadar*[10], lays down that there is nothing in law preventing a court from giving a short time in the exercise of its powers under section 151. In *Arumugha Naicker* v. *Kuppuswami Pillai*[11], it is held that a representative action under Order 1, rule 8, can be brought for rendition of accounts by certain members of an unregistered society on their own behalf and on behalf of the other members of the society. In regard to the remedy available to a creditor aggrieved by the conduct of the petitioning creditor in insolvency, it is stated in *Jaleel Sahib* v. *Seeniappa Ramaswami Mudaliar & Co.*[12], that he should come only by way of a substitution petition under section 16, Provincial Insolvency Act and not under Order 1, rule 10, Civil Procedure Code, to be added as a party, there being a specific provision covering the matter. In *Sivanarayana Reddi* v. *Nagasubbamma*[13], it is pointed out that it cannot be said that negligence of guardian to appear and defend on behalf of the minor is not a 'sufficient cause' under Order 9, rule 13. In *Basavayya* v. *Guravayya*[14], a Full Bench holds that even after the passing of a preliminary decree in a partition suit the Court has power to give appropriate directions regarding all or any of the matters either *suo motu* or on application and nothing in Order 20, rule 18, militates against that. The decision in *Seetharamayya* v. *Pattayya*[15], recognises that a decree for demolition of a wall and delivery of land and payment of costs can be the subject of adjustment which

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1. (1951) 1 M.L.J. 353.
2. (1951) 2 M.L.J. 63 (F.B.).
3. (1951) 1 M.L.J. 472.
4. (1951) 2 M.L.J. 402.
5. (1951) 2 M.L.J. 74 (F.B.).
6. (1951) 2 M.L.J. 506.
7. (1951) 1 M.L.J. 422.
8. (1951) 1 M.L.J. 682.
9. (1951) 1 M.L.J. 580.
10. (1951) 1 M.L.J. 425.
11. (1951) 2 M.L.J. 564.
12. (1951) 1 M.L.J. 87.
13. (1951) 2 M.L.J. 418.
14. (1951) 2 M.L.J. 176 (F.B.).
15. (1951) 1 M.L.J. 577.

can be pleaded in bar of execution under Order 21, rule 2, though uncertified, and the mere award of costs would not make it a portion of the complex decree proper and there was no reason why the decree-holder should not proceed with execution as to costs. According to *Kattikoolathil Mammu* v. *Vinayaka Kamath*[1], a person who has attached property has certainly got interest in seeing that the property is not alienated or otherwise transferred, and so an attaching creditor has got an interest in the property sufficient to enable him to make a deposit under Order 21, rule 89. *Marimuthammal* v. *Thandavaraya Naicken*[2], holds that Order 21, rule 95, has no application to a case where the persons in possession are neither judgment-debtors nor persons claiming title created by them but are only trespassers and a suit by a stranger auction-purchaser for recovery of possession from a trespasser will not be barred. *Doraikannu Asari* v. *Nataraja Chetty*[3], recognises that a person purchasing property in dispute during pendency of an appeal cannot be impleaded as a party to the appeal under Order 22, rule 10, though his interests might be prejudiced by any compromise reached by the parties especially where the genuineness and validity of the assignment is disputed and an enquiry into those questions is foreign to the scope of the appeal. In *Veeraswami* v. *Lakshmadu*[4], it is held that when the plaintiff files a petition to withdraw the suit with permission to file a fresh suit regarding the same subject-matter and the liberty is refused the Court should retain the suit for trial in the usual course. According to *Johara Bibi* v. *Mohamad Sadak Thambi Marakayar*[5], an agreement by a Muslim mother to refer a dispute relating to her minor son to arbitration is *ab initio* void as she is neither a legal nor a Court guardian and the question of voidability under Order 32, rule 7 (2), cannot arise. *Kamalamma* v. *Venkata Sastri*[6], decides that with regard to suits within the scope of Order VII, of the Original Side Rules, Order 37, rule 4, Civil Procedure Code, has no application and in view of the vital differences between Order 37, Civil Procedure Code and Order 7 of the Original Side Rules the latter should be deemed to supersede the former regarding suits on negotiable instruments within the scope of Order 7 of the Original Side Rules. In *Narayana Dossji Varu* v. *M. H. R. E. Board*[7], it is held that the words 'such other order' in Order 39, rule 1, do not contemplate the appointment of a receiver. The decision in *Venkataramana Aiyar* v. *Unnamalai Ammal*[8], recognises that notwithstanding the fact that after an order of remand the suit was disposed of, the party aggrieved by the order of remand would have a right of appeal against the order of remand. *Thirumalaiswami Mudaliar* v. *Periaswami Mudali*[9], points out that an order of remand made without coming to the conclusion that the decision of the trial Court is wrong is illegal and after the Madras amendment to Order 41, there is no residuary power in an appellate Court to order a remand apart from Order 41, rule 23. In *Arjan Singh* v. *Kartar Singh*[10], the Supreme Court holds that the discretion to receive and admit additional evidence is not arbitrary but judicial, circumscribed by the limitations specified in Order 41, rule 27, and under that provision it is the appellate Court that must require the evidence to enable it to pronounce judgment. According to *Swaminatha Pillai* v. *Balasubramania Udayar*[11], it is not even necessary for the appellate Court to hear the petitioner in a pauper appeal before rejecting the appeal under Order 44, rule 1 or grant the appellant time for paying the Court-fee. In *Chinnaswami* v. *Veerappa Chettiar*[12], it is held that where after an appeal had been filed in the Supreme Court the appellant fails to furnish security and also the deposit towards defraying charges of printing, he cannot escape the consequences of cancellation of certificate by relying on the fact that Order 45, Civil Procedure Code, had not been suitably amended, by the High Court. The decision in *Krishna Aiyar* v. *Narayanan*[13], states that Order 47,

1. (1951) 1 M.L.J. 400.
2. (1951) 2 M.L.J. 485.
3. (1951) 2 M.L.J. 26.
4. (1951) 1 M.L.J. 194.
5. (1951) 2 M.L.J. 56.
6. (1951) 1 M.L.J. 676.
7. (1951) 1 M.L.J. 62.
8. (1951) 1 M.L.J. 474 : I.L.R. (1951) Mad. 825.
9. (1951) 2 M.L.J. 532.
10. (1951) S.C.J. 274 : (1951) 1 M.L.J. 556 (S.C.).
11. (1951) 1 M.L.J. 472.
12. (1951) 2 M.L.J. 197.
13. (1951) 1 M.L.J. 187.

rule 1, is clearly not intended to enable a Judge to write a second judgment reversing his first because on fuller arguments and further consideration he thought that the view he had first taken was wrong.

Criminal Procedure Code.

According to *Meyyammai Achi* v. *Venkatachalam Chettiar*[1], where a magistrate has issued a search warrant under section 96, Criminal Procedure Code, without giving any reasons and it does not appear that he had exercised his judicial mind in the matter, the order is liable to be quashed. The scope of section 144 is explained in *Bandi Butchiah, In re*[2], which holds that mere defamatory statements and even highly objectionable abusive articles against prominent government officials cannot be dealt with under section 144 but that prosecutions for the substantive offences committed are the correct steps to take in such cases. In *Abu Sayed Sahib* v. *Ahmed Mohideen Sahib*[3], it is held that 'land' in section 145 is used as synonymous with immoveable properties which include things attached to the earth, and thus a dispute though it may relate to a mill really includes the dispute to the land in which it is situate and section 145 will apply. *Akkuliya Naidu* v. *Venkataswamy Naidu*[4], points out that a proceeding under section 145 constitutes a prosecution which would sustain an action for damages for malicious prosecution. The decision in *Chenchu Narayana* v. *Karrapati Kesappa*[5], is that section 145 (1) does not contemplate any sustained inquiry before the making of the preliminary order and that the two months' period contemplated in the proviso to sub-section 4 should be deemed to be from the date when the petition was presented. According to *Ramiah* v. *Nachiappa Chettiar*[6], inasmuch as an officer appointed under section 145 (4) has not got the same powers as a receiver under section 146, his powers are limited to taking into custody of what is on the land and disposing of it under the orders of the magistrate. In *Guruswami Naidu* v. *Guruswami Naidu*[7], it is held that gossip, rumour or hearsay would no doubt not ordinarily fall within the scope of section 154, but if some one goes to a police station and definitely tells the officer in charge that a cognisable offence has been committed, and that statement is made with a view to induce the police officer to inquire into the matter, it is 'information' within the meaning of section 154. *Venkataratnam, In re*[8], takes the view that under section 161 (3) the police officer may reduce to writing any statement made to him in the course of investigation, and if he does so he shall make a separate record of the statement of each of such persons, and that the failure to do so would be to violate a mandatory provision of law. *Ramaswami, In re*[9], holds that the statutory requirements of section 164 are that a magistrate shall before recording any confession explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him. According to *Arunachala Goundan* v. *Akhileswara Aiyar*[10], where the charge is one of non-accounting (against an agent collecting moneys) and there is no specific allegation of misappropriation in any particular place, the venue of the trial will be the place where the accounting has got to be done and has not been done. *Sheriff* v. *Govindan*[11], lays down that the expression 'the Court to which appeals ordinarily lie' in section 195 (3), Criminal Procedure Code, has reference to a higher Court to which an *unrestricted* right of appeal against the decisions of an inferior Court are provided, and merely because there is a *limited* right of appeal to the Supreme Court from the High Court under Article 134 (1) of the Constitution it cannot be said that the Supreme Court is a Court of Criminal appeal against the decisions of the High Court and so where the High Court ordered the prosecution of two Sub-Inspectors for an offence under section 193, Indian Penal Code, there is no automatic right of appeal to the Supreme Court under section 476-B, Criminal Procedure Code. *Srinivasa Aiyar* v. *Saraswathi Ammal*[12],

1. (1951) 1 M.L.J. 12.
2. (1951) 2 M.L.J. 374.
3. (1951) 1 M.L.J. 429.
4. (1951) 1 M.L.J. 189.
5. (1951) 1 M.L.J. 102.
6. (1951) 2 M.L.J. 90.
7. (1951) 1 M.L.J. 426.
8. (1951) 1 M.L.J. 430.
9. (1951) 2 M.L.J. 630.
10. (1951) 2 M.L.J. 627.
11. (1951) 2 M.L.J. 501.
12. (1951) 2 M.L.J. 649.

decides that section 198, Criminal Procedure Code, is applicable also where the charge is the abetment of an offence punishable under section 494, Indian Penal Code, and a Court is precluded from taking cognisance of an offence without a complaint from a person aggrieved. *Muthuvadi Ammal*, In re[1] points out that an offence under section 426, Indian Penal Code, is not one covered either by section 198 or section 199, Criminal Procedure Code and therefore in respect of an offence under that section a complaint by an aggrieved person is not essential. *Sagili Solomon*, In re[2], holds that the mere fact that the accused is asked whether he wishes to say anything more in addition to what he had stated in the committing Court is not a sufficient compliance with section 342 and the fact that there was a full and complete questioning of the accused in the committing Court is not sufficient. According to *Guruswami Thevar*, In re[3], a judgment written by a Sessions Judge who heard the evidence in the case, which on the handing over charge of his office to another is pronounced by the successor is a nullity, and section 350 (1) does not apply to sessions trials. In *Lakshmiah*, In re[4], it is pointed out that in an appeal against conviction the appellate Court can alter the finding maintaining the sentence and no prejudice is caused if the Court alters the finding to some other offence of which the accused was charged in the lower Court and acquitted. *Raghava Variar*, In re[5], lays down that the powers of a Criminal Court in revision are even wider than the powers of a civil Court acting under Order 41, rule 33, Civil Procedure Code. *Simhadri Krishnamurthi*, In re[6], decides that where owing to a patent error, there is an acquittal by an Assistant Sessions Judge, it is competent for the Sessions Judge to make a reference to the High Court under section 438, though the government has not filed an appeal against the acquittal under section 417. In *Jogendranath Jha* v. *Shri Polailal Biswas*[7], the Supreme Court lays down that though section 439 (1) authorises the High Court to exercise in its discretion any of the powers conferred on a Court of appeal by section 423, sub-section 4, specifically excludes the power to convert a finding of acquittal into one of conviction and by merely characterising the judgment of the trial Court as perverse, the High Court cannot reverse pure findings of fact based on the trial Court's appreciation of evidence. *Durgaprasada Rao* v. *Sundar Bhatt*[8], states that inasmuch as section 476, applies only to cases falling within section 195 (1) (*b*) and (*c*), Criminal Procedure Code and section 183, Indian Penal Code does not fall under the latter, no complaint for an offence under section 183, Penal Code, can be filed by Court. In *Venkateswara Rao*, In re[9], it is held that there is no provision of law which enables the Court to rehear an application for a writ of *habeas corpus* which had been disposed of on the merits even though the party or counsel was not present at the time it was heard, and since the writ is of a criminal nature no review is allowed in such matters. *Sampath* v. *Govindammal*[10], recognises that it is not necessary that in every case where a husband seeks to recover the custody of his minor wife he should proceed under section 25, Guardians and Wards Act; he has also a remedy under section 491, Criminal Procedure Code. In *K. V. R. S. Mani*, In re[11]: it is pointed out that the Court's discretion under section 540 is very wide, that the very width requires a corresponding caution in using the power; and where the prosecution knowing full well and being in possession of all the materials which can be spoken to by a particular witness and intending to call him as a witness fails to do so, the Court cannot exercise its powers under section 540 to call the person as a Court witness.

End of (1952) 1 M.L.J. (*Journal*).

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1. (1951) 1 M.L.J. 674.
2. (1951) 2 M.L.J. 423.
3. (1951) 1 M.L.J. 549.
4. (1951) 2 M.L.J. 235.
5. (1951) 1 M.L.J. 700.
6. (1951) 2 M.L.J. 270.
7. (1951) 2 M.L.J. 288 (S.C.).
8. (1951) 1 M.L.J. 290.
9. (1951) 1 M.L.J. 11.
10. (1951) 2 M.L.J. 259.
11. (1951) 1 M.L.J. 184.

ARREARS AND THE BAR.

(The Advocate-General, Madras (Sri V. K. Thiruvenkatachari) has sent the following note for publication.)

In the earlier years, the legal journals used to publish judicial statistics and discuss them. Later on some journals used to publish extracts of English statistics. The practice has been discontinued and even the annual Statistics of Civil Courts and Statistics of Criminal Courts published under Government authority in Madras are not reviewed or even noticed in the law journals. I suggest that the legal journals and the Bar through these journals and otherwise should take an interest in the question and actively assist in the solution.

By courtesy of the Registrar of the Madras High Court, I give below the figures of filing and disposal in each of the years 1950 and 1951 and the first quarter of 1952, that is, from January 1, to March 31, :—

Year.	F.A.	O.S.A.	C.C.C.A.	L.P.A.	S.A.	C.M.A.	C.M.S.A.	C.R.P.
1950 Filed ..	930	132	107	153	2408	762	243	2146
Disposed ..	682	92	96	130	2314	645	241	2000
1951 Filed ..	784	143	146	215	1911	734	223	2267
Disposed ..	658	115	99	139	2047	495	203	2265
1952 From 1st January to 31st March.								
Filed ..	249	43	46	116	579	196	59	589
Disposed ..	158	23	18	52	443	105	44	551
Pending on 31st March, 1952. ..	3131	227	272	318	6664	1964	523	2480

Four years ago the Court was working without full strength. But that cannot account very much for the pendency. The figures show that, by and large, disposals equal institutions. The problem is the large backlog.

One school advocates restriction of second appeals and revision petitions, making the district courts final; on the other hand bar associations have been raising the question of permitting second appeals on fact where the district judgment is a reversing one. Increasing the number of judges is a logical mathematical solution but does not seem practical politics.

What the Bar can do to help is the question. One suggestion from experience is that if every advocate would examine *his* arrears it will help. We could go through all the cases on our file and scrutinise them. The lapse of time, refusal of a stay or injunction and various other circumstances have rendered some of our cases infructuous. If things are left to take care of themselves, printing goes on, meaning expense to the client and blocking printing of other cases by the Court. Again, there are numerous writ petitions and other cases pending which are governed by decisions already rendered and reported. These cases could be withdrawn or posted for consequential orders. We could make a positive move in the matter instead of waiting for the Registrar to post the cases at a late date. Ever if 5 to 10 per cent. of second appeals and miscellaneous cases and a smaller percentage of first appeals go off the record, the effect will be good, particularly as it results from the Bar taking the initiative.

I suggest that Advocates give their views on the whole question.

V. K. THIRUVENKATACHARI.

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